

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Division of State Parks  
Honolulu, Hawaii 96813

September 25, 2020

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawai'i

Kōke'e, Kauai, Hawaii

Authorize the Chairperson to Approve and Execute a Memorandum of Agreement between the Division of State Parks, the Division of Forestry and Wildlife, and the Department of Transportation for the Establishment of a Plant Protection Site and Seabird Mitigation Site and to Close the Enclosure to Public Access at Kōke'e State Park, Kaua'i, Tax Map Key: (4) 5-9-001:016 por.; and

Authorize the Chairperson to Approve and Execute a Memorandum of Agreement between the Division of Forestry and Wildlife and the Department of Transportation for the Maintenance of a Plant Protection Site and Seabird Mitigation Site at Kōke'e State Park, Kaua'i, Tax Map Key: (4) 5-9-001:016 por.; and

Immediate Right-of-Entry to Construct the Fence Enclosure at Kahuama'a Flats, Kōke'e State Park, Kaua'i, Tax Map Key: (4) 5-9-001:016 por.

APPLICANT AND REQUEST:

Division of Forestry and Wildlife (DOFAW) and Department of Transportation (DOT) is requesting an agreement that allows them to establish a plant protection site and seabird social attraction mitigation site to be co-located within the same fenced unit at Kahuama'a Flats within the Kōke'e State Park.

LEGAL REFERENCE:

Hawai'i Revised Statutes sections 184-6, 195D-21, and Hawai'i Administrative Rules sections 13-146-4 and -54.

LOCATION:

An approximate nine (9) acre site that would occupy a portion of an area known as "Kahuama'a Flat," within the Kōke'e State Park on Conservation District land owned by the State of Hawai'i and managed by DLNR Division of State Parks (Parks)(por. (4) 5-9-001:016 (Kōke'e State Park (Resource subzone)

AREA:

Nine (9) acres, more or less.

ZONING:

State Land Use District: Conservation  
County of Kauai CZO:

TRUST LAND STATUS:

Section 5(b) of the Hawaii Admission Act  
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CURRENT USE STATUS:

Encumbered by Governor's Executive Order 1509 setting aside land for state park purposes to be under the control and management of the State of Hawai'i, Department of Land and Natural Resources, Division of State Parks.

CHARACTER OF USE:

Right, privilege and authority to access, construct, reconstruct, rebuild, repair, maintain, remove and operate an area enclosed by a predator proof fence for the purpose of creating a plant preserve and seabird social attraction mitigation site.

TERM OF AGREEMENT:

Thirty-five (35) years starting at the date of issuance of the Incidental Take License for the Department of Transportation.

ANNUAL RENTAL:

Gratis.

CHAPTER 343 – ENVIRONMENTAL ASSESSMENT:

The Final Environmental Assessment ("FEA") and Finding of No Significant Impact ("FONSI") for the subject project was approved by the Board on June 12 and published in the OEQC's Environmental Notice on September 23, 2020 with a finding of no significant impact.

REMARKS:

Kōke'e State Park is covered in forest and is an excellent location for native plants and birds. One of the duties of the Department is to preserve parks in the State Park System in their natural

condition and improve them in such manner as to retain to a maximum extent their natural, scenic, historic, and wildlife values for the use and enjoyment of the public.

It is believed that in the 1990s DOFAW established a rare plant enclosure at Kahuama‘a Flats (aka Kalalau Rim enclosure) as an accessible place to plant a variety of different rare and endangered plant species DOFAW was trying to conserve. This enclosure has been used for outplanting of rare and endangered plants from the Kōke‘e Rare Plant Facility.

Currently the Kalalau Rim enclosure continues to be used for outplantings of threatened and endangered plants and Plant Extinction Prevention Program (PEPP) target species. It remains an important enclosure for outplanting rare species that are suitable to that area.

At its meeting on June 12, 2020, the board approved the Kauai Seabird Habitat Conservation Plan (KSHCP) and issuance of participant Incidental Take Licenses (ITLs)<sup>1</sup> (agenda item C-3 which can be found here: <https://dlnr.hawaii.gov/wp-content/uploads/2020/06/C-3.pdf>). Under the KSHCP, the participants are required to mitigate their take, in part, by enhancing, protecting, and managing suitable seabird breeding habitat on Kaua‘i to facilitate successful production of covered seabirds. The KSHCP anticipated that this could be accomplished through the construction and maintenance of a predator proof enclosure<sup>2</sup>, installation and long-term maintenance of social attraction equipment within the enclosure, and eradication of predators from within the enclosure and implementation of long-term predator control at the site.

The KSHCP identified the Kahuama‘a Flats within the Kōke‘e State Park as a good location for the mitigation/social attraction site. It is located at a similar elevation to occupied ‘a‘o nesting colonies. Habitat and topography are suitable for predator proof fencing. Given the close proximity of the mitigation site to known ‘a‘o breeding colonies and the estimated flight paths of the ‘a‘o using this area, there is a high likelihood that prospecting shearwater adults and sub-adults will visit the site and be exposed to social attraction cues. Exhibits 1 - 3 are maps of the proposed fenced area.

The location of the Kalalau Rim enclosure would be suitable for co-location of both the threatened and endangered plants enclosure and the seabird mitigation site. The predator proof fence would provide protection for both the threatened and endangered plants and any covered seabirds that decide to nest within the site. Additionally, the removal of predators from within the enclosure and the routine monitoring for predators within the enclosure called for under the KSHCP will benefit the plants as well as the covered seabirds.

DOFAW would like to enter into two (2) agreements for the maintenance of the Kalalau Rim enclosure to ensure continued protection for the plants that are currently there and to provide a recognized area for future outplantings. DOT, as the representative for the participants, would like

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<sup>1</sup> The permittees under the KSHCP are: State of Hawai‘i Department of Transportation, County of Kauai, Alexander and Baldwin, Inc., Kauai Coffee Company, LLC, Essex House Condominium Corporation dba Kaua‘i Marriott Resort, NCL (Bahamas) Ltd., SOF – XI Kauai PV Hotel, LP dba Princeville Resort Kauai, and Kaua‘i Blue, Inc. dba Sheraton Kaua‘i.

<sup>2</sup> The references to an “enclosure” and “enclosure” functionally refer to the same thing, a fenced unit that is fully enclosed for which the purpose is either to have animals included within the fenced area or to have animals excluded from the fenced area. The terms are used interchangeably in this submittal.

to formalize an agreement that allows for the seabird mitigation to remain at Kahuama'a Flats for the duration of the KSHCP plus additional time to remove the predator proof fence and enclosure at the end of the KSHCP, should it be necessary. The first agreement would be with the Division of State Parks to establish the fenced unit and the second agreement would be with the Department of Transportation for the maintenance of the fenced unit.

Parks believes that the creation of a rare, threatened, and endangered plant enclosure and a threatened and endangered seabird mitigation site will create a unique opportunity for the public to learn about Hawai'i's flora and fauna. However, because of the sensitivity of the plants and covered seabirds that are anticipated to be within the enclosure, the parties are also asking that the fenced area be closed to the public to prevent the plants and seabirds from being disturbed, pursuant to HAR § 13-146-4.

The parties believe that the best mechanism to commemorate the relationship between the parties is for Parks, DOFAW, and DOT to enter into a memorandum of agreement that sets forth the terms of the relationship between all of the parties. Parks would like to be kept updated on the status of the enclosure. DOT should be required to provide a copy to Parks of the annual report that must be submitted to the Endangered Species Recovery Committee under the KSHCP.

DOT would also like to request an immediate right of entry to allow the Prime Contractor under the KSHCP to construct the enclosure fence. The urgency is that currently the materials for the fence are on island and they would like to be able to erect the fence as soon as possible to promote the mitigation as early as possible.

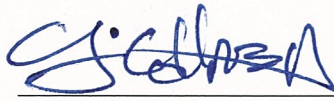
#### RECOMMENDATION:

That the Board, under the terms and conditions cited above, which are by this reference incorporated herein:

1. Authorize the Division of State Parks to enter into Memorandum of Agreement with the Division of Forestry and Wildlife and the Department of Transportation to construct and maintain a plant preservation enclosure and a seabird social attraction mitigation site described herein and under the terms and conditions cited above and further subject to the following:
  - a. DOT shall provide a copy of the annual report that the KSHCP is required to submit to the Endangered Species Recovery Committee to Parks; and
  - b. Review and approval by the Department of the Attorney General; and
  - c. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
2. Authorize the closure of the fenced area for the protection of the area and the plants and seabirds that may be within the fenced area.

3. Authorize the Division of Forestry and Wildlife to enter into Memorandum of Agreement with the Department of Transportation for the maintenance of the plant preservation enclosure and seabird social attraction mitigation site described herein and under the terms and conditions cited above and further subject to the following:
  - a. Review and approval by the Department of the Attorney General; and
  - b. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
4. Authorize an immediate right of entry for the Prime Contractor under the KSHCP to start immediate construction of the fenced enclosure.

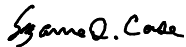
Respectfully Submitted,



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Curt Cottrell  
Administrator  
Division of State Parks

APPROVED FOR SUBMITTAL:



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Suzanne D. Case  
Chairperson  
Board of Land and Natural Resources

ATTACHMENTS:

Exhibit 1  
Exhibit 2  
Exhibit 3



Exhibit 1 – Location on island.



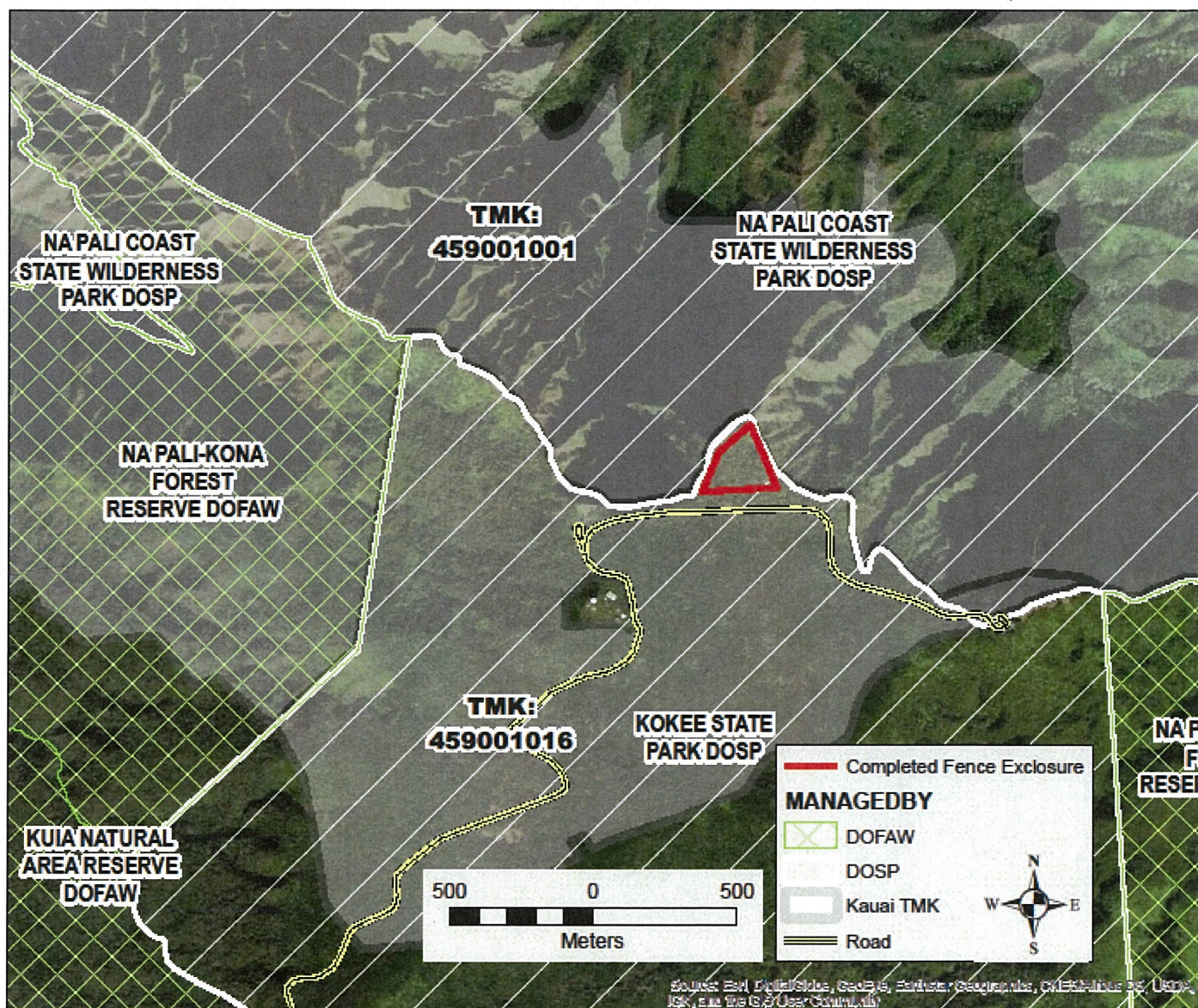


Exhibit 2 - Kahuama'a Flats.



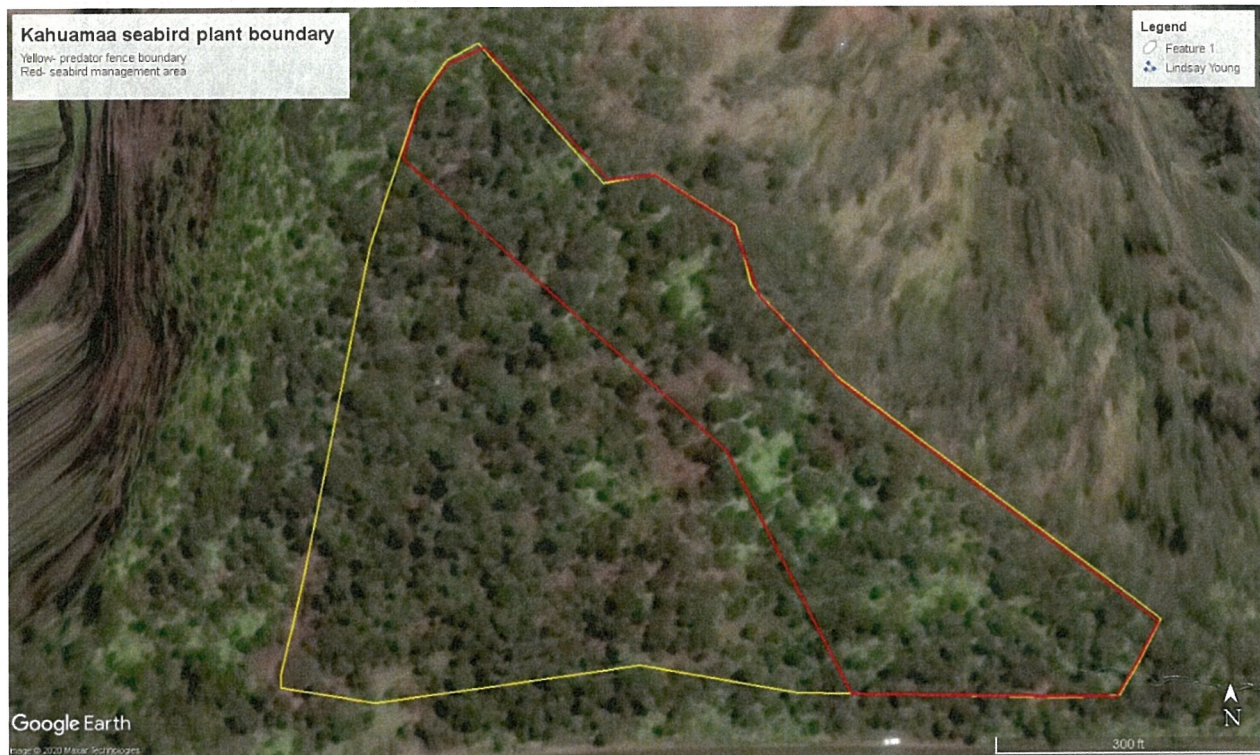


Exhibit 3 - Proposed fenced area and the approximate locations of the plant area and seabird social attraction area.